



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened in response to an application by the tenant seeking recovery of the security deposit and the filing fee paid for this application.

Both parties attend the hearing and gave evidence under oath.

Issue(s) to be Decided

Is the tenant entitled to the orders sought?

Background and Evidence

The tenant testified that this tenancy was set for a 1 year fixed term and it commenced on November 1, 2009 and ended on October 31, 2010. The tenant testified that on November 1, 2009 she paid a \$400.00 security deposit and a \$400.00 pet deposit. The tenant testified that on September 16, 2010 she provided her forwarding address to the landlord in writing however, to date landlord has not returned her deposits.

The landlord agrees that the deposit has not been returned. The landlord says his son handled the move-out and completion of the move-out report. The landlord produced a copy of the Condition Inspection Report and pointed out that the tenant had signed agreeing that the landlord could keep her deposits. The landlord says it was necessary to retain the deposits to pay for cleaning and replacement of carpets.

The tenant responded that only a move-in Condition Inspection Report was prepared. The tenant testified that a move-out Condition Inspection Report was never prepared and she did not sign anything agreeing that the landlord could keep her deposits.

Analysis

Two copies of the subject Condition Inspection Report have been submitted in evidence. Once copy is completed at both move-in and move-out, the other is a photocopy and it is completed with respect to the move-in inspection only. I note that on this "move-in" copy the tenant has signed on the last page at Item 1 agreeing that the report fairly represents the condition of the rental unit at move in but she has also signed at Item 2 which area is reserved for move-out where a tenant might agree to deductions being made to his/her deposits. The Item 2 signature is dated 10/15/09. As there is no "15th" month I will assume that the date is not written in the day/month/year format required and the date signed was listed as month/day/year being October 15, 2009 which is consistent with the tenancy beginning on November 1, 2009. While the tenant says she did not sign the report at all, the tenant's signature is on a number of documents submitted and I find that the signatures are very alike. I therefore believe that she did sign the report at Item 2. However, I find that it is reasonable and probable that the tenant signed this portion of the report at move-in to indicate the amount of the deposits she paid rather than having signed it at the end of the tenancy to allow the landlord to retain her deposits. Further, landlords and tenants cannot contract outside the Act and the Act does not allow for a term in which a tenant would agree at the start of a tenancy that the landlord would automatically retain her deposits at the end of a tenancy. I therefore find that the tenant did not give her permission to the landlord to allow him to retain her deposits.

Section 38(1) of the Act requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit if the landlord believes there is cause to retain the deposit.

If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must pay the tenant double the amount of the deposit (section 38(6)). If the tenant does not supply his forwarding address in writing within a year, the landlord may retain the deposit.

I find that the landlord has not returned the security deposit within 15 days of receipt of the tenant's forwarding address. The tenant is therefore entitled to a monetary order in amounting to double the deposit with interest calculated on the original amount only.

Having been successful in this application, I find further that the tenant is entitled recover the \$50.00 filing fee paid for this application.

Total monetary award payable by the landlord to the tenant:

Security Deposit paid on November 1, 2009	\$400.00
Pet Deposit paid on November 1, 2009	400.00
Double Security and Pet Deposits	800.00
Interest on original amounts paid from date paid to the date of this Order	0.00
Filing Fees	50.00
TOTAL MONETARY AWARD	\$1650.00

The tenant is provided with an Order in the above terms and the landlord must be served with a copy of this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.
